



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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### **MASSACHUSETTS UST SYSTEM FINANCIAL RESPONSIBILITY MECHANISMS**

**Chart 1: Summary of Financial Responsibility Options for UST Systems**

**Chart 2: Eligibility Requirements for Financial Test of Self-Insurance**

**Chart 3: Eligibility Requirements for Guarantors**

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

MassDEP Bureau of Air and Waste, October 5, 2016

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## MASSACHUSETTS UST SYSTEM FINANCIAL RESPONSIBILITY MECHANISMS

<b>Chart 1: Summary of Financial Responsibility Options for UST Systems</b>			
<b>Allowable FR Mechanisms (310 CMR 80.54)</b>	<b>Which Owners and Operators are Eligible to Use the Mechanism</b>	<b>What documents must be kept by the Owner/Operator (310 CMR 80.59)</b>	<b>What documents must be submitted to Mass DEP (310 CMR 80.58)</b>
UST Petroleum Product Cleanup Fund (21 J Program)	Only UST systems: <ul style="list-style-type: none"> <li>• That dispense fuel into motor vehicles or boats ("Dispensing Facilities")</li> <li>• That qualify for a "Certificate of Compliance"; and</li> <li>• Whose Owners/Operators pay fees to the 21 J Fund</li> </ul>	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility; and</li> <li>2. Current Underground Storage Tank Petroleum Product Cleanup Fund Certificate of Compliance</li> </ol>	None
Insurance Policy/Risk Retention Group Coverage	Any UST system	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility, and</li> <li>2. Copy of signed Insurance Policy or Risk Retention Group Coverage Policy, and</li> <li>3A. Policy endorsements and any amendments OR</li> <li>3B. Certificate of Insurance for Policy and any amendments</li> </ol>	None
Surety Bond with Standby Trust Fund	Any UST system	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility, and</li> <li>2. Copy of Surety Bond + any amendments, and</li> <li>3. Signed copy of the Standby Trust + any amendments</li> </ol>	None
Letter of Credit with Standby Trust Fund	Any UST system	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility, and</li> <li>2. Copy of Letter of Credit + any</li> </ol>	None

<b>Chart 1: Summary of Financial Responsibility Options for UST Systems</b>			
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Letter of Credit with Standby Trust Fund, continued		amendments, and 3. Signed copy of the Standby Trust + any amendments	
Trust Fund	Any UST system	1. Updated Certification of Financial Responsibility; and 2. Signed copy of the Trust + any amendments	None
Financial Test of Self-Insurance: Alternative 1	See Chart 2: Alternative 1	1. Updated Certification of Financial Responsibility; and 2. Copy of the chief financial officer's letter; and 3. Year-end financial statements for the most recent completed financial reporting year on which the Financial Test is based (this documentation must be on file no later than 120 days after the close of the financial reporting year).	Submit within 150 days of the close of the Owner or Operator's financial reporting year: 1. Updated UST System registration 2. Letter from Chief Financial Officer, and 3. Year-end financial statements
Financial Test of Self-Insurance: Alternative 2	See Chart 2: Alternative 2(a)	1. Updated Certification of Financial Responsibility; and 2. Copy of the chief financial officer's letter; and 3. Year-end financial statements for the most recent completed financial reporting year on which the financial test is based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.	Submit within 150 days of the close of the Owner or Operator's financial reporting year: 1. Updated UST System registration 2. Letter from Chief Financial Officer 3. Year-end financial statements, and 4. Special report from an independent CPA, if applicable

<b>Chart 1: Summary of Financial Responsibility Options for UST Systems</b>			
<b>Allowable FR Mechanisms (310 CMR 80.54)</b>	<b>Which Owners and Operators are Eligible to Use the Mechanism</b>	<b>What documents must be kept by the Owner/Operator (310 CMR 80.59)</b>	<b>What documents must be submitted to Mass DEP (310 CMR 80.58)</b>
Financial Test of Self-Insurance: Alternative 2 (continued)	See Chart 2: Alternative 2(b)	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility; and</li> <li>2. Copy of the chief financial officer's letter; and</li> <li>3. Year-end financial statements for the most recent completed financial reporting year on which the financial test is based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.</li> </ol>	<p>Submit within 150 days of the close of the Owner or Operator's financial reporting year:</p> <ol style="list-style-type: none"> <li>1. Updated UST System registration</li> <li>2. Letter from Chief Financial Officer</li> <li>3. Year-end financial statements, and</li> <li>4. Special report from an independent CPA, if applicable</li> </ol>
Guarantee	See Chart 3	<ol style="list-style-type: none"> <li>1. Updated Certification of Financial Responsibility; and</li> <li>2. Copy of the chief financial officer's letter and year-end financial statements for the most recent completed financial reporting year on which the financial test is based (this documentation must be on file no later than 120 days after the close of the financial reporting year); and</li> <li>3. Signed copy of the standby trust + any amendments</li> </ol>	<p>Submit within 150 days of the close of the Owner or Operator's financial reporting year:</p> <ol style="list-style-type: none"> <li>1. Updated UST System registration</li> <li>2. Letter from Chief Financial Officer,</li> <li>3. Copy of the fully-executed Guarantee if it was amended from the previous year; and</li> <li>4. Copy of the Stand-by Trust if it was amended from the previous year.</li> </ol>

<b>Chart 2: Eligibility Requirements for Financial Test of Self-Insurance</b>	
<b>Type of Financial Test of Self-Insurance</b>	<b>Eligibility Requirements</b> <b>NOTE: Tangible net worth = (total assets – intangible assets) - total liabilities</b>
Alternative 1 [310 CMR 80.54(10)(b)]	<p>The UST system Owner or Operator must have:</p> <ol style="list-style-type: none"> <li>1. A tangible net worth of at least \$10 million for 1-100 tanks or \$20 million for 101+ tanks for which a financial test is used (based on liability coverage requirements); and</li> <li>2. A tangible net worth of at least \$10 million; and</li> <li>3. A letter signed by the chief financial officer worded as specified in 310 CMR 80.54(10)(d); and</li> <li>4. Complied with one of the following:               <ol style="list-style-type: none"> <li>a. Files financial statements annually with the US Securities &amp; Exchange Commission, the US Energy Information Administration, or the Rural Electrification Administration; or</li> <li>b. Reports annually the firm's tangible net worth to Dun &amp; Bradstreet, and has an assigned D&amp;B financial strength rating of 4A or 5A; and</li> </ol> </li> <li>5. Independently audited year-end financial statements that do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.</li> </ol>
Alternative 2(a) [310 CMR 80.54(10)(c)]	<p>The UST System Owner or Operator must have:</p> <ol style="list-style-type: none"> <li>1. Net working capital and tangible net worth each at least \$6 million of liability coverage for 1 to 100 tanks and \$12 million of liability coverage for 101 or more tanks; and</li> <li>2. Tangible net worth of at least \$10 million; and</li> <li>3. Assets in the United States amounting to either               <ol style="list-style-type: none"> <li>a. at least 90 percent of the owner's or operator's total assets; or</li> <li>b. at least \$6 million of liability coverage for 1 to 100 tanks or \$12 million of liability coverage for 101 or more tanks; and</li> </ol> </li> <li>4. Independently audited year-end financial statements that do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification; and</li> <li>5. A letter signed by the chief financial officer worded as specified in 310 CMR 80.54(10)(d); and</li> <li>6. If financial statements are not filed annually with the US Securities &amp; Exchange Commission, the US Energy Information Administration, or the Rural Electrification Administration, a special report by an independent certified public accountant stating that s/he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, with the amounts in such financial statements; and, in connection with that comparison, no matters came to his or her attention which caused him to believe that the specified data should be adjusted.</li> </ol>

<p>Alternative 2(b) [310 CMR 80.54(10)(c)] Alternative 2(b) continued</p>	<p>The UST System Owner or Operator must have:</p> <ol style="list-style-type: none"> <li>1. A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard &amp; Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and</li> <li>2. Tangible net worth of at least \$10 million; and</li> <li>3. Tangible net worth at least \$6 million of liability coverage for 1-100 tanks or \$12 million of liability coverage for 101 + tanks; and</li> <li>4. Assets in the United States amounting to either: <ol style="list-style-type: none"> <li>a. at least 90 percent of the owner's or operator's total assets; or</li> <li>b. at least \$6 million of liability coverage for 1-100 tanks or \$12 million of liability coverage for 101 + tanks; and</li> </ol> </li> <li>5. Independently audited year-end financial statements that do not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification; and</li> <li>6. A letter signed by the chief financial officer worded as specified in 310 CMR 80/54(10) (d); and</li> <li>7. If financial statements are not filed annually with the US Securities &amp; Exchange Commission, the US Energy Information Administration, or the Rural Electrification Administration, the Owner/Operator, must obtain a special report by an independent certified public accountant stating that s/he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and, in connection with that comparison, no matters came to his or her attention which caused him to believe that the specified data should be adjusted.</li> </ol>
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<b>Chart 3: Eligibility Requirements for Guarantors</b> <b>310 CMR 80.54(10)(b)</b> <b>NOTE: Tangible Net Worth = (total assets – intangible assets) – total liabilities</b>
<p>The Guarantor of an UST system Owner or Operator must be:</p> <ol style="list-style-type: none"><li>1. A parent firm that owns a controlling interest in the Owner or Operator;</li><li>2. A grandparent firm that owns a controlling interest in the parent firm of the Owner or Operator;</li><li>3. A sister company that is controlled by a parent that also owns a controlling interest in the Owner or Operator; or</li><li>4. A firm that is engaged in a “substantial business relationship” with the Owner or Operator, and is issuing the guarantee as an act incidental to that relationship.</li></ol> <p>“Controlling interest” is the direct ownership of at least 50% of the voting stock in the Owner or Operator.</p> <p>The Guarantor of an UST System Owner or Operator must also meet the requirements for the Financial Test of Self-Insurance (either Alternative I or Alternative II), as described in Chart 2, above.</p>

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

<b>Types of FR Mechanisms</b>	<b>Which Local Government UST Owners and Operators are Eligible to Use the Mechanism</b>	<b>What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)</b>	<b>What Documents Must Be Submitted to MassDEP (310 CMR 80.58)</b>
Local Government Bond Rating Test for General Purpose Local Government Owners or Operators and/or Local Government Serving as a Guarantor [310 CMR 80.54(6)(b)]	<ol style="list-style-type: none"> <li>1. The Local Government must be a “General Purpose Local Government” (i.e., “a local government entity that does not perform a single function or limited range of functions”) or a local government serving as a Guarantor</li> <li>2. The Local Government must have current outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody’s rating of Aaa, Aa, A, or Baa; or a Standard &amp; Poor’s rating of AAA, AA, A, or BBB.</li> <li>3. If there are multiple outstanding issues, or bonds are rated by both Moody’s and Standard and Poor’s, the lowest rating will be used to determine eligibility.</li> <li>4. Bonds not backed by credit enhancement are not considered in determining the amount of applicable bonds outstanding.</li> </ol>	<ol style="list-style-type: none"> <li>1. Certification of Financial Responsibility</li> <li>2. Copy of the local government’s bond rating published within the last 12 months by Moody’s or Standard &amp; Poor’s</li> <li>3. Letter signed by local government’s chief financial officer [wording prescribed in 310 CMR 80.54(6)(e)]</li> </ol>	None
Local Government Bond Rating Test for Local Government Owners or Operators and Local Government Guarantors That Are Not General Purpose Local Governments [310 CMR 80.54(6)(c)]	<ol style="list-style-type: none"> <li>1. The Local Government must not be a General Purpose Local Government and does not have the authority to issue bonds.</li> <li>2. The Local Government must have current outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues, having a Moody’s rating of Aaa, Aa, A, or Baa, or a Standard &amp; Poor’s rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government.</li> <li>3. Where bonds are rated by both Moody’s and</li> </ol>	<ol style="list-style-type: none"> <li>1. Certification of Financial Responsibility</li> <li>2. Copy of the local government’s bond rating published within the last 12 months by Moody’s or Standard &amp; Poor’s</li> <li>3. Letter signed by local government’s chief financial officer [wording prescribed in 310 CMR</li> </ol>	None



**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

<b>Types of FR Mechanisms</b>	<b>Which Local Government UST Owners and Operators are Eligible to Use the Mechanism</b>	<b>What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)</b>	<b>What Documents Must Be Submitted to MassDEP (310 CMR 80.58)</b>
Local Government Bond Rating Test, continued	Standard & Poor's, the lower rating for each bond will be used to determine eligibility. 4. Bonds backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.	80.54(6)(f)]	
Local Government Fund (fully-funded dedicated fund) [310 CMR 80.54(7)(a)1.]	<ol style="list-style-type: none"> <li>1. The Fund must be dedicated by a state constitutional provision, or a local government statute, charter, ordinance, or order.</li> <li>2. The Fund must be dedicated to paying to take corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the UST System(s) ; AND</li> <li>3. The Fund must be funded and established by an irrevocable fiduciary or trust account, with the balances held as cash or investment securities.</li> <li>4. The Fund must contain: <ul style="list-style-type: none"> <li>• At least \$1 million per occurrence of a release from the UST system(s) (for UST systems handling &gt; 10,000 gallons of regulated substance/month, based on annual throughput for the previous calendar year); OR \$500,000 per occurrence of a release from the UST system(s) (for UST systems handling an average of 10,000 gallons per month or less); AND</li> <li>• The Fund must contain at least \$1 million to cover annual aggregate expenses (for owners or operators of 1-100 tanks) or at least \$2 million to cover annual aggregate expenses (for</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Certification of Financial Responsibility</li> <li>2. Copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;</li> <li>3. Letter signed by the chief financial officer of the local government owner or operator [wording is prescribed in 310 CMR 80.54(7)(b)]</li> <li>4. Year-end financial statements showing the amount in the Fund.</li> </ol>	None

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

Types of FR Mechanisms	Which Local Government UST Owners and Operators are Eligible to Use the Mechanism	What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)	What Documents Must Be Submitted to MassDEP (310 CMR 80.58)
Local Government Fund (fully dedicated fund), continued	<p>owners or operators of 101+ tanks).</p> <ol style="list-style-type: none"> <li>5. If the Fund contains only part of the required amount of coverage, it must be used in combination with other mechanism(s) that provide the remaining coverage.</li> <li>6. The Fund must not be commingled with other funds, or be used for normal government operations.</li> <li>7. The Fund can be administered by the Local Government treasurer or CFO and not by a third-party trustee.</li> </ol>		
Local Government Fund (general emergencies contingency fund) [310 CMR 80.54(7)(a)2.]	<ol style="list-style-type: none"> <li>1. The Fund is dedicated by state constitutional provision, or local government statute, charter, ordinance.</li> <li>2. The Fund must be dedicated for general emergencies, including paying to take corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the UST System(s).</li> <li>3. The Fund must be funded and established by an irrevocable fiduciary or trust account, with the balances held as cash or investment securities.</li> <li>4. The Fund contains at least: <ul style="list-style-type: none"> <li>• \$5 million per occurrence of a release from the UST system(s) (for UST systems handling &gt; 10,000 gallons of regulated substance/month, based on annual throughput for the previous</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Certification of Financial Responsibility</li> <li>2. Copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;</li> <li>3. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund.</li> <li>4. Letter signed by the chief financial officer of the local government owner or operator, worded as specified in 310 CMR</li> </ol>	None

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

Types of FR Mechanisms	Which Local Government UST Owners and Operators are Eligible to Use the Mechanism	What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)	What Documents Must Be Submitted to MassDEP (310 CMR 80.58)
Local Government Fund (general emergencies contingency fund) continued	<p>calendar year); OR \$2.5 million per occurrence of a release from the UST system(s) (for UST systems handling an average of 10,000 gallons per month or less); AND</p> <ul style="list-style-type: none"> <li>\$5 million to cover annual aggregate expenses (for owners or operators of 1-100 tanks) or at least \$10 million to cover annual aggregate expenses (for owners or operators of 101+ tanks);</li> </ul> <p>If the Fund contains only part of the required amount of coverage, it must be used in combination with other mechanism(s) that provide the remaining coverage.</p> <p>The Fund must not be commingled with other funds, or be used for normal government operations.</p>	80.54(7)(b)	
Local Government Fund (dedicated pay-in fund combined with unused bonding authority) [310 CMR 80.54(7)(a)3.]	<ol style="list-style-type: none"> <li>The Fund is dedicated by state constitutional provision, or local government statute, charter, ordinance.</li> <li>The Fund is dedicated to paying for corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the UST System(s); AND</li> <li>Payment of at least 1/7<sup>th</sup> of the total required amount of coverage is made into the Fund once every 7 years until it contains: <ul style="list-style-type: none"> <li>At least \$1 million per occurrence of a release</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>Certification of Financial Responsibility</li> <li>Copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund;</li> <li>Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund, the</li> </ol>	None

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

Types of FR Mechanisms	Which Local Government UST Owners and Operators are Eligible to Use the Mechanism	What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)	What Documents Must Be Submitted to MassDEP (310 CMR 80.58)
Local Government Fund (dedicated pay-in fund combined with unused bonding authority), continued	<p>from the UST system(s) (for UST systems handling &gt; 10,000 gallons of regulated substance/month, based on annual throughput for the previous calendar year); OR \$500,000 per occurrence of a release from the UST system(s) (for UST systems handling an average of 10,000 gallons per month or less); AND</p> <ul style="list-style-type: none"> <li>At least \$1 million to cover annual aggregate expenses (for owners or operators of 1-100 tanks) or at least \$2 million to cover annual aggregate expenses (for owners or operators of 101+ tanks).</li> </ul> <p>4. The Local Government must demonstrate bonding authority in an amount equal to the difference between the amount held in the fund and the total amount required in the fund at the beginning of the 7<sup>th</sup> year.</p> <p>5. Bonding authority may be: (a) voter-approved bonding referendum, or (b) certification from the state Attorney General that the local government has authority to issue bonds without voter approval with the proceeds to be used for UST releases.</p> <p>6. The Fund must not be commingled with other funds, or be used for normal government operations.</p>	<p>previous year's balance, the amount of funding during the year and the closing balance in the fund.</p> <p>4. Documentation of the required bonding authority.</p>	
Local Government Financial Test [310 CMR 80.54(8)]	<p>The Local Government Owner or Operator must:</p> <p>1. Have the ability and authority to assess and</p>	1. Certification of Financial Responsibility	None

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Types of FR Mechanisms	Which Local Government UST Owners and Operators are Eligible to Use the Mechanism	What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)	What Documents Must Be Submitted to MassDEP (310 CMR 80.58)
Local Government Financial Test [319 CMR 80.54(8)], continued	levy taxes or to freely establish fees and charges. 2. Pass the Financial Test (see Worksheet found in Chart 6) by having a total score greater than zero 3. Not have received an adverse opinion or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. 4. Have no outstanding issues of general obligation or revenue bonds that are rated as less than “investment grade”(any outstanding issues of general obligation or revenue bonds, if rated, have a Moody’s rating of Aaa, Aa,A, or Baa or a Standard and Poor’s rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody’s rating of Aaa, Aa,A, or Baa and a Standard and Poor’s rating of AAA, AA, A or BBB).	2. Letter signed by the chief financial officer of the local government owner or operator, worded as specified in 310 CMR 80.54(8)(e), which includes the Financial Test Worksheet (Appendix 3)	
Local Government Guarantee [310 CMR 80.54(9)] Four types are available: 1. With a Standby Trust guaranteed by the State 2. With a Standby Trust guaranteed by the Local Government	1. The Local Government Guarantor must be either: <ul style="list-style-type: none"> <li>the state in which the UST system(s) is located, OR</li> <li>a local government having a “substantial governmental relationship” with the Owner or Operator (with the guarantee issued as an act incident to that relationship).</li> </ul> 2. The Local Government Guarantor must demonstrate that it meets one of the following:	1. Certification of Financial Responsibility 2. Letter signed by the chief financial officer of the local government owner or operator, worded as specified in 310 CMR 80.54(6-8), if guarantee is supported by the financial test or by bond rating test	None

**Chart 4: Additional Financial Responsibility Mechanisms Available to Local Governments**

Types of FR Mechanisms	Which Local Government UST Owners and Operators are Eligible to Use the Mechanism	What Documents Must Be Kept by the UST Owner or Operator (310 CMR 80.59)	What Documents Must Be Submitted to MassDEP (310 CMR 80.58)
<p>Local Government Guarantee [310 CMR 80.54(9)], continued</p> <p>3. No Standby Trust, guarantee provided by the State</p> <p>4. No Standby Trust, guarantee provided by the Local Government</p>	<ul style="list-style-type: none"> <li>• The bond rating test described above [ 310 CMR 80.54(6)], OR</li> <li>• The Local Government Fund requirements described above (310 CMR 80.54(7)(a)1., 2., or 3.), OR</li> <li>• The Financial Test requirements described above in this Chart and in Appendix 3 of this guidance [310 CMR 80.54(8)(e)],</li> </ul>	<p>3. The Standby Trust and any amendments, if the guarantee is supported by a stand-by trust, worded as specified in 310 CMR 80.54(9)(c) or (d)</p> <p>4. A copy of the Guarantor's bond rating published within the last 12 months by Moody's or Standard &amp; Poor's, if the guarantee is supported by the bond rating test.</p> <p>5. A copy of the guarantor's year-end financial statements for the most recent completed financial reporting year, if the guarantee is supported by the local government fund.</p>	